

# **Acceptance and Processing Withdrawal of Water Rights by Owner**

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In the situation where folks want to withdraw and terminate an active water right in our records, there are 3 categories for which the procedure for withdrawal varies as follows:

## **1. Permits, Certificates, Registered Rights – issued by New Appropriations Division.**

These rights are within DNRC jurisdiction. We can accept and process such withdrawals. However, if we have a situation where the record owner is long gone and the current owner does not wish to retain the right, then rather than make the current owner pay the \$50 filing fee just to become the record owner so that he can withdraw the right seems unfair. The current owner should be allowed to withdraw the claim if some documentation that he owns the place of use specified in the claim is attached to the withdrawal of water right form. This documentation can take the form of a copy of a deed, or a copy of the Cadastral showing his ownership. (Kim, can you quote some New Approps Authority for this if possible, and provide them with a form? Suggest the Request To Withdraw Statement of Claim modified to fit new approps to be included with this if you don't already have a form, or directing them to your form?)

In those rare occasions where the deed and Cadastral appear insufficient to support actual ownership of the right in question, then additional documentation may be required, such as a full chain of title from the owner of record to the current property owner, before accepting a withdrawal of the right.

## **2. Statements of Claim that have NOT been decreed by the Water Court yet.**

These rights are within DNRC jurisdiction. We can accept and process such withdrawals. However, if we have a situation where the record owner is long gone and the current owner does not wish to retain the right, then rather than make the current owner pay the \$50 filing fee just to become the record owner so that he can withdraw the right seems unfair. The current owner should be allowed to withdraw the claim if some documentation that he owns the place of use specified in the claim is attached to the withdrawal of claim form.

Because Statements of Claim are part of Adjudication, and will eventually be going to the Water Court, a copy of the current owner's deed must be attached to the withdrawal form, and a copy of the Cadastral showing his ownership should be included. In Part One of the 2005 Claim Examination Manual at page 473 there is a form titled Request to Withdraw Statement of Claim that can be used, with clarification added where the withdrawing owner of the property is not the owner of record.

In those rare occasions where the deed and Cadastral appear insufficient to support actual ownership of the right in question, then additional documentation must be required, such as a full chain of title from the owner of record to the current property owner, before accepting a withdrawal of the statement of claim.

### **3. Statements of Claim decreed by the Water Court.**

These types of rights are not within our jurisdiction as they have been decreed by the Water Court. We do not have the authority to process such changes once decreed. However, we can accept withdrawal forms and forward them to the Water Court for processing. In the example of a current owner who is not the owner of record, we should advise them that the Water Court will likely require a chain of title documents from the owner of record to the current property owner. At the very least we should advise them that the decision to terminate a right in our records based on withdrawal of a claim that is before the Water Court is the Court's responsibility, not ours. We cannot change our records unless directed to do so by the Water Court.

# WITHDRAWAL AGREEMENT

Water Right: \_\_\_\_\_

The notarized statement below is provided to show agreement with the Request to Withdraw

Statement of Claim submitted by water right co-owner \_\_\_\_\_

received by the DNRC on \_\_\_\_\_.

## Notarized Statement Signed by Owner:

I, having been duly sworn, depose and say that I, being of legal age and being the owner of this claim of existing water right know the contents of this request to withdraw statement of claim and that the matters and things stated there are true and correct. *(All current owners of the right as listed in the DNRC centralized record system are required to sign.)*

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature Date

STATE OF MONTANA

County of \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public for the State of Montana

(notary seal)

\_\_\_\_\_  
Notary's Printed Name

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_